

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

ORIGINAL
FILE

In re Applications of

CRYSTAL CLEAR COMMUNICATIONS, INC.

THE RADIO MINISTRIES BOARD OF VICTORY
CHRISTIAN CENTER ASSEMBLY OF GOD, INC.

For Construction Permit for a
New FM Station on Channel 240A
In Seelyville, Indiana

) MM Docket No. 92-62
)
) File No. BPH-901214MA
)
) File No. BPH-901217MJ
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JUL 8 - 1992

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: The Review Board

APPEAL

Crystal Clear Communications, Inc. ("Crystal Clear"), by its counsel and pursuant to Section 1.301 of the Commission's rules, hereby files its appeal of the Memorandum Opinion and Order (the "Order"), FCC 92M-657, released June 11, 1992, in which the application of Crystal Clear was dismissed for failure to timely file its notice of appearance.¹ The circumstances of this case do not rise to the level which, as defined by applicable Commission precedent, support dismissal. Crystal Clear therefore requests that its application be reinstated.

I. The Facts of This Case Do Not Warrant Dismissal.

The Order dismissing the Crystal Clear application cites only one reason supporting the presiding Administrative Law Judge's ("ALJ") decision to dismiss: that Crystal Clear had failed to timely file its Notice of Appearance ("NOA"). Crystal Clear's NOA, due to be filed on May 4, 1992, was apparently dated and dispatched to the courier for delivery at the FCC before 5:30 on that date. As evidenced by the Report filed by Crystal Clear's previous counsel, a copy of which is appended hereto as Attachment 1, the package containing the NOA was not

¹On June 30, 1992, Crystal Clear filed a motion for extension of time to file the instant appeal. That motion is presently pending before the Review Board. In order to eliminate any further delay or prejudice to the other applicant, Crystal Clear is filing its appeal, subject to the ruling on its pending motion.

only not delivered by 5:30, but was also inexplicably held by the courier at Washington's National Airport for two weeks. Counsel did not become aware that the NOA had not been filed until May 18th, at which point it was promptly filed.

Prior to the single delayed filing in May of 1992, Crystal Clear's application had been diligently and timely prosecuted in all respects. No prior pattern of attorney inattention had placed Crystal Clear on notice that its application could be in jeopardy. Thus, Crystal Clear reasonably relied upon its attorney. Moreover, immediately upon receipt of the Order dismissing its application, Crystal Clear moved to secure new counsel and act to have its application reinstated. Given that Crystal Clear could not have foreseen a series of bizarre coincidences, or the sudden incapability of its attorney to effectively prosecute its application (whichever the case may be) the outright dismissal of the Crystal Clear application is inordinately harsh.²

II. Commission Precedent Supports the Reinstatement of Crystal Clear.

In support of his ruling, the ALJ cites FCC Overrules Caldwell Television Associates, Ltd. ("FCC Overrules Caldwell"), 58 RR 2d 1706 (Comm'n 1984). FCC Overrules Caldwell is, however, inapposite. Caldwell defined the legal standard to be applied in instances when an initial application was filed after the cut-off date. See Caldwell Television Associates, Ltd., 53 RR 2d 1686 (Comm'n 1983). In FCC Overrules Caldwell, the Commission announced that it would adhere more

² Numerous cases exist which involve the dilatory conduct of applicant's attorneys. Cases in which a pattern of dilatory conduct existed, and in which the applicant failed to exercise due diligence in the wake of such conduct have routinely led to dismissal. See, e.g., V.O.B. Inc., 4 FCC Rcd. 6753 (Rev. Bd. 1989); Warren Price Communications, Inc., 4 FCC Rcd. 1992 (Comm'n 1992); Carroll, Carroll & Rowland, 4 FCC Rcd. 7149 (Rev. Bd. 1989); Mark A. Perry, 4 FCC Rcd. 6500 (Rev. Bd. 1989). In sharp contrast, the nonfeasance of an attorney which was not part of a pattern of dilatory conduct, but an isolated instance, and the attendant diligence of the applicant to rectify the situation, justifies the reinstatement of an applicant. See Maricopa County Community College District ("Maricopa"), 4 FCC Rcd. 7754 (Rev. Bd. 1989). Precedent clearly establishes that reasonable reliance upon one's attorney, and diligent action in the wake of attorney nonfeasance may excuse an applicant's violation of procedural rules.

strictly to the cut-off rules. The case at hand involves not an initial cut-off date, but an NOA. The strict standard applicable to cut-off dates is wholly inapplicable here. Rather, recent case law demonstrates that outright dismissal for the untimely filing of an NOA is unduly harsh.³

In his Order dismissing Crystal Clear, the ALJ ignored the case which sets forth the legal standard to be applied here. In Communi-Centre Broadcasting, Inc. v. FCC, 856 F.2d 1551, 1554 (D.C. Cir. 1988), the Court opined that, in evaluating just cause to dismiss an applicant for failure to prosecute, the Commission must consider (1) the justification for failure to comply, (2) the prejudice suffered by other parties, (3) the burden placed on the administrative system, and (4) the need to punish abuse of the system and deter further misconduct. None of these factors support dismissal here.

First, the justification for the late filing is unchallenged. Crystal Clear had originally filed an NOA on July 15, 1991 (See Attachment 2), thus, it can reasonably be argued that Crystal Clear filed not too late but too early. At most, the failure to file again with another member of the agency was a relatively minor technicality. Second, as we have seen, not only was an NOA filed earlier than May 4th, but even the slight delay in the filing of the second NOA had no prejudicial effect. In fact, counsel for the only other applicant in the proceeding received the service copy of Crystal Clear's second NOA on May 7, 1992, only three days after the deadline established by the Hearing Designation Order ("HDO"). See Attachment 3, Motion to Dismiss Application of Crystal Clear Communications, Inc. ("Motion to Dismiss") at Attachment B. The other applicant clearly was on notice that Crystal Clear intended to go forward

³In Cannon Communications Corp., an applicant's failure to timely amend its application and failure to comply with an ALJ's order did "not amount to the kind of egregious, disruptive or prejudicial conduct for which the sanction of dismissal is appropriate." 6 FCC Rcd. 570, 570 (Comm'n 1991). Most recently, the conduct of Nancy Naleszkiewicz which led to the late filing of her NOA was deemed not so "derelict in complying with procedural requirements as to deserve dismissal for non-prosecution." Nancy Naleszkiewicz, 7 FCC Rcd. 1797, 1799 (Comm'n 1992).

in the proceeding.⁴ Third, the chief "burden" placed on the administrative system has been the burden of reviewing a motion to dismiss Crystal Clear's application and writing the dismissal order. Crystal Clear can hardly be charged with having imposed on other applicant the burden of seeking the dismissal of its application, or with putting the ALJ to the trouble of dismissing it. Finally, the consequences of late-filing are so potentially severe that no one in his right mind would deliberately file late as a tactic to garner an unfair advantage. There is no evidence of "gamesmanship" on the part of Crystal Clear in this instance.

In Nancy Naleszkiewicz, 7 FCC Rcd. 1797 (1992) the full Commission applied these standards to exonerate the grossly late (45 days) filing of a notice of appearance. The Commission noted that stricter standards might apply in a comparative context (Naleszkiewicz was a singleton), but it nevertheless pardoned the late filing under circumstances far more egregious than those presented here.

Traditionally, the Review Board has carefully evaluated the individual circumstances surrounding requests for reinstatement by applicants dismissed for failure to prosecute. In this regard, the Board has tempered the harshness of absolute compliance with procedural rules by considering "unusual" or "very special circumstances" which may explain or excuse failures of an applicant for procedural rules "are not to be wielded with Draconian, mechanical, or insensitive finality." Horizen Community Broadcasters, Ltd., 102 FCC 2d 1267 (Rev. Bd. 1982), citing Pan American Broadcasting Co., 89 FCC 2d 167, 170 (Rev. Bd. 1982).

⁴ The ALJ was similarly aware of Crystal Clear's intention to proceed, as the service copy of Crystal Clear's NOA containing opposing counsel's law firm date stamp of May 7, 1992 was provided as Attachment B to opposing counsel's Motion to Dismiss. Given this clear evidence of Crystal Clear's intention to participate, the ALJ should have accepted the late-filed NOA. See John Spencer Robinson, 5 FCC Rcd 5542 (Rev. Bd. 1990) citing St. Croix Wireless Co., 3 FCC Rcd 4073 (Comm'n 1988) [dismissal for failure to timely file NOA unduly harsh, since applicant's participation in settlement indicated its intent to fully participate].

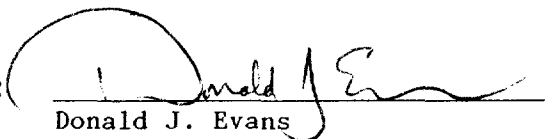
III. Conclusion.

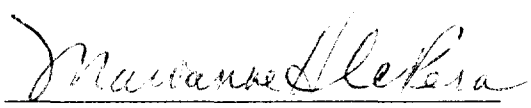
The dismissal of Crystal Clear's application is inordinately harsh. The slightly late-filed NOA had (a) already been filed with the agency, (b) occurred under totally unpredictable circumstances, and (c) meets none of the criteria established by the Court for dismissal of an application. Crystal Clear's application should be reinstated.

Respectfully submitted,

CRYSTAL CLEAR COMMUNICATIONS, INC.

By:


Donald J. Evans


Marianne H. LePera

Its Attorneys

McFadden, Evans & Sill
1627 Eye Street, N.W., #810
Washington, D.C. 20006
(202) 293-0700

July 8, 1992

ATTACHMENT 1

Stanley G. Emert, Jr.

2318 2d Avenue, Ste. 845
Seattle, Washington 98121
(206) 525-5459

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MAY 20 1992

Federal Communications Commission
Office of the Secretary

May 18, 1992

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MAY 20 1992

FCC MAIL BRANCH

The Honorable Donna R. Searcy, Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: MM Docket No. 92-62
Seelyville, Indiana


Dear Ms. Searcy:

I enclose the original and proper copies of a "Report" and "Notice of Change of Address of Counsel" for filing in the above-captioned matter on behalf of Crystal Clear Communications, Inc.

Please send a stamped copy of the same to me in the self addressed stamped envelope.

Thank you for your kind assistance.

Sincerely,


Stanley G. Emert, Jr.

SGE:
Enclosure

cc: Per Certificate of Service

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MAY 20 1992

Before the
Federal Communications Commission
Washington, D.C. 20554

Federal Communications Commission
Office of the Secretary

In re:
Applications of

) MM Docket No. 92-62

CRYSTAL CLEAR COMMUNICATIONS, INC.

) File No. BPH-901214MJ

THE RADIO MINISTRIES BOARD OF VICTORY
CHRISTIAN CENTER ASSEMBLY OF GOD, INC.

) File No. BPH-901217MJ

For Construction Permit
for a new FM Station in
Seelyville, Indiana

To: The Honorable John Fyrsiak
Administrative Law Judge

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MAY 20 1992

FCC MAIL BRANCH

REPORT

Crystal Clear Communications, Inc. ("Crystal Clear") , by and through counsel, hereby provides the following report:


1. On Saturday, May 16, 1992, counsel for Crystal Clear received a document entitled "Non-Delivery Notice" ("the notice") from the courier which services had been retained for timely delivery of a package to the office of the Secretary of the Commission on May 4, 1992. The package contained, *inter alia*, Crystal Clear's post Hearing Designation Order "Notice of Appearance". The notice showed that the package was being held at the Washington National Airport near Washington D.C.

2. Counsel called the number listed on the notice for an explanation of the document, but could not get a response until Monday, May 18. From several phone conversations with courier personnel, it appears that the package was delivered to the Commission after 5:30 p.m., even though it was clearly marked to deliver before 5:30 p.m. Inexplicably at this point, the package has been held for two (2) weeks at the airport.

3. Crystal Clear's Notice of Appearance was served upon the Presiding Judge, other counsel, the Hearing Branch, and the Data Management Branch. Counsel requested that the package containing Crystal Clear's Notice of Appearance be delivered to the Commission immediately. Additional information is being sought by Crystal Clear as to this matter.

4. Crystal Clear further notes that prior to July 15, 1991, it properly paid its hearing fee, and filed a "Notice of Appearance and Payment of Hearing Fee" at that time. Moreover, it has filed a "Petition for Leave to Amend" and "Integration and Diversification Statement". Crystal Clear requests no relief in this pleading, but filed this Report to provide information¹.

Crystal Clear Communications, Inc.

By: 
Stanley G. Emert, Jr.
Its Attorney

Law Office of Stanley G. Emert, Jr.
2318 2d Avenue, Ste. 845
Seattle, Washington 98121
(206) 525-5459

May 18, 1992

¹ Counsel has heard that Crystal Clear's sole competing applicant, has filed a "Motion to Dismiss" Crystal Clear's application. This pleading has not yet been received, and will be answered as soon as possible upon receipt.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing "Report" has been sent by prepaid United States mail, first class, on the 18th day of May, 1992, to the following:

The Honorable John M. Frysiak
Federal Communications Commission
2000 L. Street, N.W.
Washington D.C. 20554

Charles Dziedzic, Esq.
Chief, Hearing Branch
Federal Communications Commission
2025 M Street N.W.
Room 7212
Washington D.C. 20554

Chief, Data Management Staff
Audio Services Division
Mass Media Bureau
Federal Communications Commission
Room 350
1919 M Street NW
Washington, D.C. 20554

Harry Martin, Esq.
Reddy, Begley & Martin
2033 M Street, N.W.
Washington, D.C. 20036

Counsel to THE RADIO MINISTRIES BOARD OF VICTORY
CHRISTIAN CENTER ASSEMBLY OF GOD, INC.



Stanley G. Emert, Jr.

ATTACHMENT 2

BRYCE & EMERT
212 S. Peters Road
KNOXVILLE, TENNESSEE 37923
(An Association)

FCC/MELLON JUL 15 1991

Philip J. Bryce
Stanley G. Emert, Jr.

David P. Klucken

P.O. Box 52225
Knoxville, Tennessee 37950-2225
615/ 690-5566
615/ 690-4967 (fax)

July 12, 1991

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MAY 26 1992

Federal Communications Commission
Mass Media Services
c/o Mellon Bank, Three Mellon Bank Center
27th Floor
Attn: Wholesale Lockbox Shift Supervisor
525 William Penn Way, Room 153-001
Pittsburgh, PA 15259-0001

Federal Communications Commission
Office of the Secretary

Re: FM Application
Seelyville, Indiana
Crystal Clear Communications, Inc.

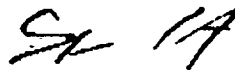
Dear Sir or Madam:

Enclosed please find a Notice of Appearance And Payment Of Hearing Fee in the above referenced matters. Also enclosed is the Form 155 and a check in the amount of \$6,670.00 for the filing fee.

Please file same accordingly and return to me a stamped copy in the enclosed self-addressed envelope.

Thank you for your assistance in this matter. Should there be any questions, please do not hesitate to contact me.

Sincerely,



Stanley G. Emert, Jr.

SGE:krd
Enclosures

Before the
Federal Communications Commission
Washington, D.C. 20554

In re:
Applications of

Crystal Clear Communications, Inc.

File No. BPH-901214MJ


For Construction Permit
for a new FM Station in
Seelyville, Indiana

To: The Commission

NOTICE OF APPEARANCE AND PAYMENT OF HEARING FEE

Crystal Clear Communications, Inc., by and through counsel, hereby states that said party will appear on the date fixed for the hearing and present evidence on the issues as required by new Commission rules. In accordance with Section 1.221 of the Commission's Rules, a hearing fee in the amount of \$ 6,780.00 is submitted herewith.

Crystal Clear Communications, Inc.

By: 
Stanley G. Emert, Jr.
Its Attorney

Bryce & Emert
212 S. Peters Road
P.O. Box 52225
Knoxville, Tennessee 37950
(615) 690-5566

July 12, 1991

FEE PROCESSING FORM



Please read instructions on back of this form before completing it. Section I MUST be completed. If you are applying for concurrent actions which require you to list more than one Fee Type Code, you must also complete Section II. This form must accompany all payments. Only one Fee Processing Form may be submitted per application or filing. Please type or print legibly. All required blocks must be completed or application/filing will be returned without action.

SECTION I

APPLICANT NAME (Last, first, middle initial)

~~Shauntee, Lori M.~~ **CRYSTAL CLEAR COMMUNICATIONS, INC. c/o LORIE M. SHAUNTEE**

MAILING ADDRESS (Line 1) (Maximum 85 characters - refer to instruction (2) on reverse of form)

1407 8th Street

MAILING ADDRESS (Line 2) (if required) (Maximum 85 characters)

CITY

Terre Haute

STATE OR COUNTRY (if foreign address)

Indiana

ZIP CODE

47802

CALL SIGN OR OTHER FCC IDENTIFIER (if applicable)

BPH-901214MJ

Enter in Column (A) the correct Fee Type Code for the service you are applying for. Fee Type Codes may be found in FCC Fee Filing Guides. Enter in Column (B) the Fee Multiple, if applicable. Enter in Column (C) the result obtained from multiplying the value of the Fee Type Code in Column (A) by the number entered in Column (B), if any.

(A)	(B)	(C)								
FEE TYPE CODE	FEE MULTIPLE (if required)	FEE DUE FOR FEE TYPE CODE IN COLUMN (A)	FOR FCC USE ONLY							
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SECTION II

— To be used only when you are requesting concurrent actions which result in a requirement to list more than one Fee Type Code.

(A)	(B)	(C)								
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ADD ALL AMOUNTS SHOWN IN COLUMN C, LINES (1) THROUGH (5), AND ENTER THE TOTAL HERE.
THIS AMOUNT SHOULD EQUAL YOUR ENCLOSED REMITTANCE. →

TOTAL AMOUNT REMITTED WITH THIS APPLICATION OR FILING	FOR FCC USE ONLY
\$6,760.00	

ATTACHMENT 3

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FILE

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MAY 11 1992

BEFORE THE

Federal Communications Commission

WASHINGTON, D. C. 20554

Federal Communications Commission
Office of the Secretary

In re Applications of)	MM Docket No. 92-62
)	
CRYSTAL CLEAR COMMUNICATIONS, INC.)	File No. BPH-901214MA
)	
THE RADIO MINISTRIES BOARD OF VICTORY)	File NO. BPH-901217MJ
CHRISTIAN CENTER ASSEMBLY OF GOD, INC.)	
)	
For a Construction Permit for a New)	
FM Station on Channel 240A)	
Seelyville, Indiana)	

To: Administrative Law Judge John M. Frysiak

MOTION TO DISMISS APPLICATION OF
CRYSTAL CLEAR COMMUNICATIONS, INC.

The Radio Ministries Board of Victory Christian Center Assembly of God, Inc. ("Radio Board"), by counsel, and pursuant to Section 1.221(c) of the rules, hereby moves for dismissal of the application of Crystal Clear Communications, Inc. ("Crystal Clear") for failure to file a notice of appearance. In support thereof, the following is stated:

The Hearing Designation Order, DA 92-361 (released April 13, 1992) ("HDO") in this proceeding was mailed April 14, 1992. See Attachment A hereto, a "Docket File" copy of the HDO with an "FCC Mail Section" stamp of 10:14 A.M., April 14, 1992. Pursuant to Section 1.221(c) of the Commission's rules, Crystal Clear was required to "file with the Commission" its written notice of appearance "within 20 days of the mailing" of the HDO. Thus,

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Handwritten signature/initials

Crystal Clear's notice of appearance was required to be on file with the Commission by no later than May 4, 1992.¹

On May 7, 1992 counsel for Radio Board received the attached notice of appearance and correspondence, both executed by Crystal Clear's counsel and both dated May 4, 1992. See Attachment B hereto.² Commission records, however, reveal that as of today, May 11, 1992, no notice of appearance by Crystal Clear has been received by the Commission. See Attachment C, consisting of an FCC Document Index Report and a Dockets Summary.

Section 1.221(c) provides, inter alia, that "[W]here an applicant fails to file such a written notice of appearance within the time specified. . . the application will be dismissed with prejudice for failure to prosecute." Since Crystal Clear has not filed a notice of appearance with the Commission,³ its application must be dismissed, in accordance with that rule.⁴

¹ Radio Board filed its notice of appearance on May 4, 1992.

² It appears from the certificate of service and the text of the cover letter that the notice of appearance was not even mailed until May 4, the date it was required to be on file with the Commission.

³ Nor did Crystal Clear file any "petition to accept, for good cause shown, such written appearance beyond expiration of said 20 days. . . ." See Section 1.221(c).

⁴ Crystal Clear is Radio Board's sole competitor for the Seelyville station. Thus, upon dismissal of Crystal Clear's application, Radio Board's application will be eligible for grant, conditioned upon meeting the air hazard and contingent environmental issues specified in the HDO.

WHEREFORE, In light of the foregoing, this motion to dismiss should be GRANTED and the application of Crystal Clear Communications, Inc. DISMISSED WITH PREJUDICE.⁵

Respectfully submitted,

THE RADIO MINISTRIES BOARD OF VICTORY
CHRISTIAN CENTER ASSEMBLY OF GOD, INC.

By


HARRY C. MARTIN

By


CHERYL A. KENNY

Its Counsel

⁵ Since Crystal Clear's application must be dismissed, and Crystal Clear is Radio Board's sole competitor for the Seelyville station, the Radio Board has not commenced discovery by exchanging documents with Crystal Clear under Section 1.325(c)(2) of the rules. However, out of an abundance of caution, Radio Board is today filing its integration statement, in line with Section 1.325(c)(2) of the rules, since that document must be filed with the presiding judge.

Attachment A

DOCKET FILE COPY OF HDO SHOWING MAILING DATE

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 92-62

In re Applications of

CRYSTAL CLEAR COMMUNICATIONS, INC.
(hereafter "CCCI")

File No. BPH-901214MA

THE RADIO MINISTRIES BOARD OF VICTORY
CHRISTIAN CENTER
ASSEMBLY OF GOD, INC.
(hereafter "VCC")

File No. BPH-901217MJ

For Construction Permit
for a New FM Station on Channel 240A
in Seelyville, Indiana

HEARING DESIGNATION ORDER

Adopted: March 23, 1992;

Released: April 13, 1992

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.

2. Each of the captioned applicants propose to locate their transmitting antennas on a new tower. Our engineering study indicates that both CCCI and VCC have failed to address the matter of how they propose to resolve any RF exposure to workers on their respective towers. See 47 C.F.R. § 1.1307(b). Consequently, we are concerned that each may have failed to comply with the environmental criteria set forth in the *Report and Order* in GEN Docket No. 79-163, 51 Fed. Reg. 14999 (April 12, 1986). See also, *Public Notice* entitled "Further Guidance for Broadcasters Regarding Radiofrequency Radiation and the Environment" (released January 24, 1986). Under the rules, applicants must determine whether their proposals would have a significant environmental effect under the criteria set out in 47 C.F.R. § 1.1307. If the application is determined to be subject to environmental processing under the 47 C.F.R. § 1.1307 criteria, the applicant must then submit an Environmental Assessment (EA) containing the information delineated in 47 C.F.R. § 1.1311. Section 1.1307 states that an EA must be prepared if the proposed operation would cause exposure to workers or the general public to levels of RF radiation exceeding specific standards. Since CCCI and VCC failed to indicate how workers engaged in maintenance and repair would be protected from exposure to levels exceeding the ANSI guidelines, each will be required to submit the environmental impact information described in 47 C.F.R. § 1.1311. See generally, OST Bulletin No. 65 (October, 1985) entitled "Evaluating Compliance With FCC-

Specified Guidelines for Exposure to Radiofrequency Radiation," at 28. Therefore, CCCI and VCC will be required to file, within 30 days of the release of this Order, an EA with the presiding Administrative Law Judge. In addition, the applicant must file with the Chief, Audio Services Division, who will then proceed regarding this matter in accordance with the provisions of 47 C.F.R. § 1.1308. Accordingly, the comparative phase of the case will be allowed to proceed until the environmental phase is completed. See *Golden State Broadcasting Corp.*, 71 FCC 2d 229 (1979), *recon. denied sub nom. Old Pueblo Broadcasting Corp.*, 83 FCC 2d 337 (1980). In the event the Mass Media Bureau determines, based on its analysis of the Environmental Assessments, that the applicants' proposals will not have a significant impact upon the quality of the human environment, the contingent environmental issue shall be deleted and the presiding judge shall thereafter not consider the environmental effects of the proposals. See 47 C.F.R. § 1.1308(d).

3. VCC petitioned for leave to amend its application on January 17, 1992. The accompanying amendment was filed after March 27, 1991, the last date for filing minor amendments as of right. Under Section 1.65 of the Commission's Rules, the amendment is accepted for filing. However, an applicant may not improve its comparative position after the time for filing amendments as of right has passed. Therefore, any comparative advantage resulting from the amendment will be disallowed.

4. Since the FAA has determined that the antenna proposed by CCCI will constitute a hazard to air navigation, and since no determination has been received from the FAA as to whether the antenna proposed by VCC would constitute a hazard to air navigation, an issue with respect thereto will be included and the FAA made a party to the proceeding.

5. Data submitted by the applicants indicate that there would be a significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to any of the applicants.

6. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

7. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. If a final environmental impact statement is issued with respect to CCCI and VCC in which it is concluded that the proposed facilities are likely to have an adverse effect on the quality of the environment, to determine whether the proposals are consistent with the National Environmental Policy Act, as implemented by 47 C.F.R. §§ 1.1301-1319.

2. To determine whether there is a reasonable possibility that the tower height and location proposed by CCCI and VCC would constitute a hazard to air navigation.

3. To determine which of the proposals would, on a comparative basis, better serve the public interest.

4. To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if any.

8. IT IS FURTHER ORDERED, That in accordance with paragraph 2 hereinabove, CCCI and VCC shall submit the environmental assessment required by 47 C.F.R. § 1.1311 to the presiding Administrative Law Judge within 30 days of the release of this Order, with a copy to the Chief, Audio Services Division.

9. IT IS FURTHER ORDERED, That the petition for leave to amend filed by VCC IS GRANTED, and the corresponding amendment IS ACCEPTED to the extent indicated herein.

10. IT IS FURTHER ORDERED, That the Federal Aviation Administration IS MADE A PARTY to this proceeding with respect to the air hazard issue only.

11. IT IS FURTHER ORDERED, That a copy of each document filed in this proceeding subsequent to the date of adoption of this Order shall be served on the counsel of record in the Hearing Branch appearing on behalf of the Chief, Mass Media Bureau. Parties may inquire as to the identity of the counsel of record by calling the Hearing Branch at (202) 632-6402. Such service shall be addressed to the named counsel of record, Hearing Branch, Enforcement Division, Mass Media Bureau, Federal Communications Commission, 2025 M Street, N.W., Suite 7212, Washington, D.C. 20554. Additionally, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Federal Communications Commission, Room 350, 1919 M Street, N.W., Washington D.C. 20554.

12. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order. Pursuant to Section 1.325(c) of the Commission's Rules, within five days after the date established for filing notices of appearance, the applicants shall serve upon the other parties that have filed notices of appearance the materials listed in: (a) the Standard Document Production Order (see Section 1.325(c)(1) of the Rules); and (b) the Standardized Integration Statement (see Section 1.325(c)(2) of the Rules), which must also be filed with the presiding officer. Failure to so serve the required materials may constitute a failure to prosecute, resulting in dismissal of the application. *See generally, Proposals to Reform the Commission's Comparative Hearing Process* (Report and Order in Gen. Doc. 90-264), 6 FCC Rcd 157, 160-1, 166, 168 (1990), *Erratum*, 6 FCC Rcd 3472 (1991), *recon. granted in part*, 6 FCC Rcd 3403 (1991).

13. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

Attachment B

COPY OF NOTICE OF APPEARANCE

Stanley G. Emert, Jr.
568 E. Broadway Street
Maryville, Tennessee 37801
(615) 681-4311

RECEIVED
REDDY, BEGLEY & MARTIN

May 4, 1992

MAY 07 1992

Addressed to _____
Handled by _____
File _____

The Honorable Donna R. Searcy, Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: MM Docket No. 92-62
Seelyville, Indiana

Dear Ms. Searcy:

I enclose the original and proper copies of a "Notice of Appearance" for filing in the above-captioned matter on behalf of Crystal Clear Communications, Inc.

Please send a stamped copy of the same to me in the self addressed stamped envelope.

Thank you for your kind assistance.

Sincerely,


Stanley G. Emert, Jr.

SGE:
Enclosure

cc: Per Certificate of Service

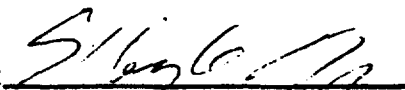
Before the
Federal Communications Commission
Washington, D.C. 20554

In re:		
Applications of)	MM Docket No. 92-62
CRYSTAL CLEAR COMMUNICATIONS, INC.)	File No. BPH-901214MJ
THE RADIO MINISTRIES BOARD OF VICTORY CHRISTIAN CENTER ASSEMBLY OF GOD, INC.)	File No. BPH-901217MJ
For Construction Permit for a new FM Station in Seelyville, Indiana		
To: The Commission		

NOTICE OF APPEARANCE

Crystal Clear Communications, Inc., by and through counsel, hereby states that said party will appear on the date fixed for the hearing and present evidence on the issues as required by new Commission rules. This matter was designated for a hearing by Hearing Designation Order released April 16, 1992 (FCC 92M-464). The hearing fee has been previously submitted.

Crystal Clear Communications, Inc.

By: 
Stanley G. Emert, Jr.
Its Attorney

Law Office of Stanley G. Emert, Jr.
568 E. Broadway Street
Maryville, Tennessee 37950
(615) 681-4311

May 4, 1992

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing "Notice of Appearance" has been sent by prepaid United States mail, first class, on the 4th day of May, 1992, to the following:

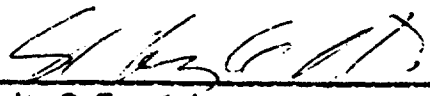
The Honorable John M. Frysiak
Federal Communications Commission
2000 L Street, N.W.
Washington D.C. 20554

Charles Dziedzic, Esq.
Chief, Hearing Branch
Federal Communications Commission
2025 M Street N.W.
Room 7212
Washington D.C. 20554

Chief, Data Management Staff
Audio Services Division
Mass Media Bureau
Federal Communications Commission
Room 350
1919 M Street NW
Washington, D.C. 20554

Harry Martin, Esq.
Reddy, Begley & Martin
2033 M Street, N.W.
Washington, D.C. 20036

Counsel to THE RADIO MINISTRIES BOARD OF VICTORY
CHRISTIAN CENTER ASSEMBLY OF GOD, INC.



Stanley G. Emert, Jr.